

AN ACT

AUTHORIZING CITIES TO PARTICIPATE AS JOINT OWNERS OR POWER PURCHASERS IN JOINT ELECTRIC GENERATION AND TRANSMISSION PROJECTS; SETTING FORTH REQUIRED TERMS AND PROVISIONS FOR PARTICIPATION AGREEMENTS AND RELATED MATTERS; PROVIDING SEVERABILITY; DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 50-342A, Idaho Code, be, and the same is hereby enacted to read as follows:

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50-342A. PARTICIPATION IN GENERATION AND TRANSMISSION PROJECTS.

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(a) It is hereby determined and declared that securing long-term electric generation and transmission resources at cost-based rates is essential to the ability of municipal utilities to provide reliable and economic electric services at stable prices to the consumers and communities they serve and is essential to the economy and the economic development of their communities and to the public health, safety and welfare. It is further determined and declared that in order to facilitate the development of such cost-based resources, it is necessary and desirable that municipal electrical utilities have sufficient flexibility and statutory authority to pay the ordinary and necessary expenses associated with the operation and maintenance of such cost-based resources.

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(b) When used in this section the following terms shall have the following meanings:

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(1) “Joint electric facilities” means all works, facilities and property necessary or useful in the generation or transmission of electric power and energy.

(2) “Participants” means a city and the other parties to a participation agreement, including municipalities or public agencies of other states who have authority to own, construct, develop and operate joint electric facilities under the laws of such state.

(3) “Participation agreement” means (i) an agreement providing for the joint ownership and operation of joint electric facilities or (ii) a long-term power purchase agreement providing for the right to receive a share of the capacity or output of joint electric facilities at cost-based rates.

(c) In order to obtain long-term electric generation and transmission resources at cost-based rates, a city that owns and operates a municipal electric utility system may acquire an undivided ownership interest in, or a contractual right to the capacity, output or services of, joint electric facilities under a participation agreement with one or more investor-owned, cooperative or municipal utilities or with other entities engaged in the generation or transmission of

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electricity. Prior to entering into any participation agreement, the governing body of the city shall consider:

- (1) the city's long-term power supply and transmission requirements;
- (2) the efficiencies and economies of scale expected to be achieved by participating with others in the acquisition or construction of joint electric facilities;
- (3) the estimated cost, commercial operation date and useful life of the joint electric facilities;
- (4) the financial, regulatory and technical feasibility of constructing and operating such joint electric facilities; and
- (5) the availability, reliability and cost of existing or alternate power supply and transmission resources.

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In order to facilitate such consideration, the city may retain engineering, financial or other consultants to provide advice and recommendations concerning such long term power supply or transmission facilities and in such event, all written reports prepared by such consultants shall be made a matter of record and be available to the public in accordance with the provisions of the Idaho Public Records Act.

(d) Each participation agreement shall include provisions regarding:

(1) the specific joint or undivided ownership interests of the participants in the joint electric facilities or the specific contractual rights of the participants to the capacity, output or services of the joint electric facilities, any restrictions on the right of the participants to withdraw from participation in the operation of the joint electric facilities or restrictions upon transfer or partition of such interests or rights and the method for allocating the capacity or output of the joint electric facilities among the participants;

(2) the creation of a management committee comprised of representatives of the participants which shall be responsible for the governance of the acquisition, construction and operation of the joint electric facilities, and provisions granting each participant, voting rights proportional to its its percentage entitlement to the output or capacity of such joint electric facilities;

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(3) the acquisition, construction and operation of the joint electric facilities and the appointment of construction and operation, managers and agents and the employment of personnel in connection with the joint electric facilities, which may include provisions for the indemnification of such managers, agents and personnel;

(4) the methods for financing the costs of acquisition, construction and operation of the joint electric facilities, which may include provisions obligating or

enabling each participant to finance its proportional share of such costs, based on its ownership interest in or contractual rights to the joint electric facilities;

(5) the allocation of the costs of acquisition, construction and operation of the joint electric facilities among the participants proportional to the percentage entitlement to the output or capacity of such joint electric facilities and the specific obligations of the participants to pay such costs, which may include a provision obligating each participant to pay its respective share of all costs of the joint electric facilities regardless of whether such facilities are acquired, completed, operable or operating and notwithstanding the suspension or reduction of the capacity, output or services of the joint electric facilities for any reason;

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(6) the remedies upon a default by any participant in the performance of its obligations under the participation agreement, which may include a provision obligating or enabling the other participants to succeed to all or a portion of the ownership interest or contractual rights and obligations of the defaulting participant;

(7) the liabilities of the participants, which shall be several and not joint and no participant shall be obligated for the acts, omissions or obligations of any other participant; and

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(8) the amendment and termination of the agreement, and for the decommissioning of the joint electric facilities and the funding of the costs thereof.

(e) A city may finance its proportionate share of the acquisition, construction and operation costs of joint electric facilities through the issuance of its bonds as provided by law or through financing arrangements with the Idaho Energy Resources Authority under Title 67, Chapter 89, Idaho Code.

SECTION 2. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.

SECTION 3. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after passage and approval.